

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION)

Plaintiff,)

v.)

D. GOTTLIEB & CO.,)

WILLIAMS ELECTRONICS, INC. and)

ROCKWELL INTERNATIONAL CORPORATION,)

Defendants.)

CIVIL ACTION

NO. 78 C 2246

JUDGE GRADY

EMERGENCY MOTION UNDER RULE 26(c) F.R.C.P. TO ENJOIN
THE PLAINTIFF FROM UNAUTHORIZED FURTHER DISCOVERY

Now comes the defendant, Williams Electronics, Inc., by its attorneys and seeks an order of this Court enjoining the plaintiff from taking further discovery of Atari, Inc. for the following reasons.

On Monday, August 9, 1982, after the close of the offices of Williams' attorneys, a Notice of Deposition, including an Exhibit A setting forth eight categories of documents was served on Williams' attorneys. (A copy is attached hereto). The notice specifies that a deposition of an employee or employees of Atari under Rule 30(b)(6) F.R.C.P. is to be taken in San Francisco, California this Friday, August 13, at 10:00 a.m.. We have been advised by counsel for Atari that a subpoena for the deposition and to

produce the documents set out in Exhibit A to the notice is to be served on Atari today.

We note that there are only three business days between the effective receipt of the notice by the attorneys for Williams and the commencement of the depositions. We further note that the principal attorneys for the defendants Gottlieb and Rockwell are in Texas and the notice shows service on them by mail. The allowance of three business days or less does not constitute the "reasonable notice" required by Rule 30(b)(1) F.R.C.P. and for that reason alone, this attempted discovery by the plaintiff should not be permitted.

Equally important, discovery in this case has been closed for many months. On July 14, 1982, discovery was re-opened for a period of forty days for the sole purpose of permitting defendants to take certain depositions with respect to the secrecy or non-secrecy of Atari's prior work and the related issues of abandonment, suppression or concealment under 35 U.S.C. §102(g). (See transcript of proceedings, p. 12 attached hereto). The plaintiff was granted an additional two weeks for the same limited purpose. Leave was not given to either party to take discovery with respect to any other issue in this case.

A brief look at the documents requested in Exhibit A to the Notice of Deposition makes it clear that significant numbers of them have nothing to do with the depositions of the individuals who have been deposed or will be deposed in accordance with the order of this Court. For instance, the documents requested in item 1 of Exhibit A are documents pertaining to the activities of sixteen individuals not named by any of the parties in this matter as individuals to be deposed. The documents also include a time period which is of no interest to any of the parties in this matter.

Item No. 2 in Exhibit A calls for many documents which have already been produced by Atari to the plaintiff and the defendants in this case. The documents requested in item 3 do not in any way deal with the issues of secrecy, abandonment, suppression or concealment.

The remaining documents are likewise not related to the issues for which discovery has been permitted and, in many cases, are documents already obtained from Atari by the parties.

In sum, the Deposition Notice is not timely and the discovery sought by way of subpoena upon Atari is not authorized by the present discovery order of this Court. Accordingly, the Deposition Notice should be quashed and the

plaintiff ordered to withdraw any subpoena served upon Atari. Further, plaintiff should be ordered not to proceed any further with discovery in this matter unless it is specifically authorized by order of this Court.

Respectfully submitted,



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August 10, 1982